

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Frank Rackley, Jr. |) | File No. BR-20120210ABF |
| |) | Facility ID No. 22294 |
| Application for Renewal of License for |) | |
| DWNBN(AM), Meridian, Mississippi |) | |

MEMORANDUM OPINION AND ORDER

Adopted: January 28, 2020

Released: January 28, 2020

By the Commission:

I. INTRODUCTION

1. Before the Commission is an Application for Review (AFR) filed by Eddie Rackley, Jr., Administrator (Administrator) and Jimmie L. Hopson (Hopson) on October 1, 2019.¹ The AFR seeks review of a Media Bureau (Bureau) decision denying the Administrator’s Petition for Reconsideration of a Bureau decision dismissing the captioned application for license renewal (Renewal Application) due to the deficiency of not being signed by the licensee.² For the reasons set forth below, we dismiss the AFR and, on alternative and independent grounds, deny it.

II. BACKGROUND

2. Until his death on January 25, 2011, Frank Rackley, Jr. (Licensee) was the licensee of WNBN(AM), Meridian, Mississippi (Station).³ More than a year later, on February 10, 2012, when license renewal applications for Mississippi radio stations were due, the Administrator filed the Renewal Application for the Station under the Licensee’s name, without any disclosure that the Licensee had died. The Renewal Application was signed by Eddie Rackley, Jr., not as “Administrator,” but as a purported “Officer” of the Licensee.⁴ Under the Commission’s rules (Rules), an application for involuntary assignment of license must be filed with the Commission within thirty days after the date of death of the

¹ On December 10, 2019, Friends of WNBN submitted “Comments” supporting the AFR. We dismiss that pleading as untimely and because Friends of WNBN do not explain why they were unable to participate in the proceeding before the Bureau. See 47 U.S.C. §155(c)(4) and 47 CFR §§ 1.115(a) and (d).

² *Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, FCC to Aaron P. Shainis, Esq.*, Letter Order (Sept. 4, 2019) (Reconsideration Order).

³ Due to the cancellation of the Station’s license when the Renewal Application was dismissed, the Station is now listed in the Bureau’s licensing database with the call sign DWNBN.

⁴ Renewal Application, Section I (listing the Licensee as the applicant and the contact representative) and Section II (signature of the Administrator as “Officer”). The Renewal Application certified that the Station was operating and had not been silent for any period of 30 days or longer, which meant that some undisclosed party or parties continued to operate the Station following the Licensee’s death. *Id.*, Section III, Questions 4 and 6.

licensee.⁵ There is no evidence that the Administrator attempted to file any such application prior to filing the Renewal Application.⁶

3. Almost six years later, on December 7, 2017, and almost seven years after he was required to submit the application, the Administrator filed the necessary Form 316 application (Assignment Application) for consent to the involuntary assignment of license for the Station from the Licensee to the Administrator.⁷ Documents from the Licensee's probate proceeding submitted with the Assignment Application showed that (a) in 2014, the probate court had approved the appointment of the Administrator,⁸ and (b) in 2015, the probate court approved a request for the Administrator to sell the assets of the Station to Hopson for \$10,000.⁹ On April 19, 2018, the Bureau granted the Assignment Application authorizing the assignment to the Administrator. However, he never submitted a notice of consummation for the Assignment Application. Moreover, the parties never took the steps needed to obtain FCC approval for Hopson to become the licensee of the Station. Specifically, neither the Administrator nor Hopson ever submitted an assignment application for Hopson to be approved as the Station's new licensee. The Assignment Application listed Eddie Holt as the Administrator's contact representative. The Bureau's staff specifically instructed Mr. Holt about the need to file an application for consent to assign the Station's license from the Administrator to Hopson. Nevertheless, no such application was filed.

4. On June 20, 2018, the Bureau dismissed the Renewal Application as defective because it was improperly filed in the Licensee's name without acknowledging his death. The Bureau stated that as a result, the Station's license expired by its own terms on June 1, 2012.¹⁰

5. On July 24, 2018, the Administrator filed a Petition for Reconsideration (PFR) of the Cancellation Order. The Administrator argued that reconsideration was warranted because he had not been represented by counsel and was unfamiliar with the Rules and the Commission's procedures.¹¹ The Administrator requested reinstatement of the Renewal Application so it could be appropriately amended and so that he could then undertake necessary filings to obtain interim and permanent approvals for Hopson to operate the Station.¹²

6. The Bureau's Reconsideration Order upheld the dismissal of the Renewal Application as defective. The Reconsideration Order pointed out that section 73.3513(a)(1) of the Rules required that

⁵ 47 CFR § 73.3541 ("Within 30 days after the occurrence of such death or legal disability, an application on FCC Form 316 shall be filed requesting consent to involuntary assignment of such permit or license or for involuntary transfer of control of such corporation to a person or entity legally qualified to succeed to the forgoing interests under the laws of the place having jurisdiction over the estate involved.").

⁶ As the court-appointed administrator of the Licensee's estate, the Administrator was the rightful entity to sign the Assignment Application, even though it was not timely. If the involuntary assignment application had been timely filed, granted and consummated, the Administrator would have been able to properly file the Renewal Application.

⁷ FCC File No. BAL-20171207ABE. Hopson is listed as the contact representative for the Licensee, reinforcing Hopson's involvement with the Station by that date.

⁸ *Agreed Judgement Appointing Administrator and Waiving the Requirement of a Bond Pending Inventory* (Chancery Court, Lauderdale County, MS, July 8, 2014).

⁹ *Judgment Approving Final Accounting, Authorizing Sale of Property, and Closing Estate* (Chancery Court, Lauderdale County, MS, June 26, 2015) (approving sale of Station to Hopson and directing the Administrator to execute a Bill of Sale and any other documents necessary to accomplish the transaction).

¹⁰ *Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, FCC to Eddie J. Rackley and Jimmie L. Hopson*, Letter Order (June 20, 2018) (Cancellation Order).

¹¹ PFR at 2-3.

¹² *Id.* at 3.

the Renewal Application be signed by the Licensee due to his status as an individual licensee.¹³ Because the Renewal Application did not comply with or request a waiver of this requirement, the Renewal Application was defective and subject to dismissal under Section 73.3566(a) of the Rules.¹⁴ The Bureau rejected the Administrator's arguments as unsupported by any Rule or precedent and inconsistent with Commission policy holding that licensees and parties prosecuting applications at the Commission assume the responsibility of complying with the Rules even if they are not represented by counsel.¹⁵

7. The AFR does not contest the legal analysis of the Reconsideration Order, but (a) reiterates the defense of proceeding without counsel and lacking familiarity with Commission Rules and procedures,¹⁶ (b) argues for the first time that there was no intent to deceive the Commission,¹⁷ (c) claims for the first time that Hopson is a minority and an innocent party,¹⁸ and (d) argues for the first time that the efforts of the Administrator and Hopson to negotiate a consent decree with the Bureau should have been continued to a conclusion that allowed the Station's license to be renewed with Hopson as the new licensee.¹⁹

III. DISCUSSION

8. We dismiss the AFR to the extent it reiterates the defense of proceeding without counsel and lacking familiarity with Commission Rules and procedures, because the AFR fails even to attempt to show any error in the Bureau's analysis of relevant precedent for such a defense.²⁰ On alternative and independent grounds, we deny the AFR with respect to these claims. We conclude that the staff properly rejected the claims and uphold the staff decision for the reasons stated therein.²¹

¹³ Reconsideration Order at 2 (citing 47 CFR § 73.3513(a)(1)).

¹⁴ *Id.* (citing 47 CFR § 73.3566(a)).

¹⁵ *Id.* at 1.

¹⁶ AFR at 2-3.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 2, 4-5 and Attach. H.

¹⁹ *Id.* at 3-5 and Attach. E-G.

²⁰ See 47 CFR § 1.115(b)(2)(i) (the application for review shall specify with particularity that the "action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy"); *Entercom Commc'ns and CBS Radio*, Memorandum Opinion and Order, 33 FCC Rcd 6621, 6623-24, para. 6 (2018), *recons. dismissed/denied*, Order on Reconsideration, 33 FCC Rcd 10707 (2018), and Order on Reconsideration, 34 FCC Rcd 5441 (2019); *Tama Radio Licenses of Tampa, FL, Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 7588, 7589, para. 2 (2010), *aff'd sub nom. Cherry v. FCC*, 641 F.3d 494 (D.C. Cir. 2011).

²¹ Reconsideration Order at 1-2 (explaining that "it is well settled that parties that act pro se assume the responsibility of complying with the Rules") (citing *Eagle Broadcasting Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 595 (2008) (applicant's pro se status did not exempt it from complying with Commission rules or statutory provisions); *Mandeville Broadcasting Corp.*, Memorandum Opinion and Order, 2 FCC Rcd 2523, 2524 (1987) ("[P]ro se parties do assume the responsibility of conforming with the Commission's Rules and policies." (citations omitted))).

9. We also reject the AFR's attempt to raise new matters that the Bureau never had the opportunity to address.²² We dismiss the AFR insofar as it raises the new arguments described above.²³ On alternative and independent grounds, we reject on the merits the new arguments the Administrator and Hopson raise in the AFR. In 2001, the Commission expressly overruled prior cases that allowed applications not signed in accordance with the Commission's Rules to be amended *nunc pro tunc* to comply with the Rules based on equitable considerations.²⁴ The Commission explained that the prior approach was unworkable because the "potential for abuse and uncertainty [were] too great."²⁵ Rather, on a prospective basis, the Commission explained that it would "adhere strictly" to the signature requirements set forth in the Rules.²⁶ Whether or not Hopson is an innocent third party, or whether the Licensee or the Administrator engaged in an unauthorized transfer of control to Hopson, or whether a transfer of control to Hopson might have served the public interest if there had been a license to transfer, this provides no basis for allowing acceptance or amendment of a renewal application that was not properly signed.²⁷

10. We also reject the arguments concerning negotiation of a possible consent decree. As an initial matter, courts have found that "the FCC's . . . decision to enter into [a] Consent Decree [is] committed to the agency's nonreviewable discretion . . ."²⁸ Here, there was no basis for a consent decree that would allow the Administrator or Hopson to continue to operate the Station because the Station's license expired by its own terms on June 1, 2012 due to the defective Renewal Application.²⁹

IV. ORDERING CLAUSES

11. For the reasons set forth above, **IT IS ORDERED** that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended,³⁰ and sections 1.115(b)(2)(i), (c) and (g) of the Commission's Rules,³¹ the Application for Review filed by Eddie J. Rackley and Jimmie L. Hopson on October 1, 2019, **IS DISMISSED** for the reasons stated herein, and alternatively **IS DENIED**.

²² See 47 U.S.C. § 155(c)(5), and 47 CFR § 1.115(c) (no application for review shall be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass); *Emmanuel Commc'ns, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 9294, 9297, para. 8 (2019); *Alaska Educ. Radio Sys., Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 9289, 9292, para. 9 (2019). See also *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C. Cir. 2003) (upholding Commission order dismissing an application for review presenting arguments the delegated authority had no opportunity to address).

²³ See *supra* para. 7.

²⁴ *Hardrock Concrete Placement Company*, Memorandum Opinion and Order, 16 FCC Rcd 2593, 2595-96, para. 8 (2001).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Given that we are affirming the Bureau's finding that the Station's license expired on its own terms on June 1, 2012, we find that the Bureau erred in granting the Assignment Application in 2018. However, that action is now final and, given our action here, this issue is moot.

²⁸ *New York State Dept. of Law v. FCC*, 984 F.2d 1209, 1211 (D.C. Cir. 1993).

²⁹ See also *Comcast Corp. v. FCC*, 526 F. 3d 763, 769-70 (D.C. Cir. 2008) ("an agency is not bound by the actions of its staff if the agency has not endorsed those actions") (internal quotation marks omitted).

³⁰ 47 U.S.C. § 155(c)(5).

³¹ 47 CFR § 1.115(b)(2)(i), (c), (g).

12. **IT IS FURTHER ORDERED** that, pursuant to section 5(c)(4) of the Communications Act of 1934, as amended,³² and sections 1.115(a) and (d) of the Commission's Rules,³³ the Comments filed by Friends of WNBN on December 10, 2019 **IS DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³² 47 U.S.C. § 155(c)(4).

³³ 47 CFR § 1.115(a), (d).